



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt resolution authorizing the City Manager to amend existing contract between the City of Lodi and Calpine Energy Services, L.P. (CALPINE) and to execute the appropriate documents to complete the amendment (EUD)

MEETING DATE: September 4, 2002

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to amend the existing contract between the City of Lodi (City) and Calpine Energy Services, L.P. (CALPINE) and to execute the appropriate documents to complete the amendment.

BACKGROUND INFORMATION: Currently, the City receives power under a CALPINE contract for 25 MW on a 24-hour basis for the period January 1, 2002 to December 31, 2011. This contract was entered into during the middle of last year's energy crisis.

Current conditions in the energy and financial markets provide an opportunity to lower existing power supply costs by amending the existing contract to terminate future energy deliveries associated with the contract. The Electric Utility Department will then pursue other power supply option purchases that will be shaped to the City's power supply requirements more closely, at a lower cost to the City.

The goals of the restructuring as presented during a recent City Council Shirtsleeve meeting are as follows:

- Reduce the level of counter party risk associated with the existing contract
- Shape the City's resource portfolio to more closely follow load growth
- Shape bulk power costs to more closely match load/revenue growth
- Accelerate growth of cash reserves
- Maintain regional advantages in terms of rates

The proposed contract amendment provides an opportunity to lower overall power costs by reducing what the City would have paid to CALPINE. The possible savings range from 15% to 20% on a net present value basis. Equally important, amending the contract to eliminate future energy deliveries will reduce the risk of a failure of CALPINE to provide power. At the time the contract was entered into, CALPINE had a substantially better credit rating and financial condition than it's present condition. In order to mitigate this risk, terminating energy deliveries under the CALPINE contract is necessary.

Termination of energy deliveries under the existing contract entails, essentially, two steps. The first step would be amending the existing CALPINE contract by buying the value of the contract out based on a mutually agreed upon value between CALPINE and the City. The value is equal to the difference in the value of the contract and the current market price of energy over the contract term. The second step requires the City to fund the agreed upon energy delivery termination cost with an appropriate bond financing. This resolution is intended to implement the amendment of the existing contract and set in motion the financing of the agreed upon value of the energy delivery termination.

APPROVED:


H. Dixon Flynn - City Manager



CITY OF LODI

COUNCIL COMMUNICATION

Upon execution, the City will substantially lower its monthly bulk power costs. The most significant savings will occur during the first three years. Total expected present value savings are expected to be up to \$10,000,000. Final elements of the contract amendment are being negotiated presently and are expected to be finalized by the time of the City Council meeting. A copy of the contract amendment will be available for review at the earliest possible time. The entire team working on this transaction will be present to answer questions.

FUNDING: 160652 – Power Supply Budget

Alan N. Vallow
Electric Utility Director

PREPARED BY: Boris Prokop, Power Supply and Rates Manager

ANV/BP/lst

C: City Clerk
Finance Director

APPROVED: _____
H. Dixon Flynn - City Manager

RESOLUTION NO. 2002-189

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI
APPROVING THE FORM OF, AND AUTHORIZING THE
EXECUTION AND DELIVERY OF, AN AMENDMENT TO AN
ELECTRIC ENERGY PURCHASE AGREEMENT AND
AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

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WHEREAS, the City of Lodi (the "City"), a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "State"), owns and operates a municipal electric utility system (the "Electric System") providing electric service to the inhabitants of the City; and

WHEREAS, in order to satisfy the electric service requirements of the inhabitants of the City, the City has entered into contracts for the purchase of electric capacity and energy and capacity rights in electric transmission facilities; and

WHEREAS, due to a financial crisis of the investor-owned utilities in the State and a reduction in the amount of electricity available for purchase to serve consumers in the State, the Governor of the State declared a state of emergency and the State, through the Department of Water Resources, commenced purchasing electricity to serve the loads of the customers of the investor-owned utilities; and

WHEREAS, the conditions leading to the Governor's declaring a state of emergency created uncertainty as to whether the City would be able to purchase power in the short-term markets to satisfy the load requirements of the inhabitants of the City; and

WHEREAS, the City, together with certain other members of the Northern California Power Agency ("NCPA"), acting through NCPA, arranged for the purchase of electric energy from Calpine Energy Services, L. P. ("Calpine"), on the terms and conditions of the Western Systems Power Pool Agreement (version effective July 1, 2000) (the "WSPP Terms") and CAISO confirmations which would contain the specific terms of the energy purchase; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into a long-term, fixed-price electric energy purchase agreement with Calpine consisting of the WSPP Terms and the CAISO Confirmation, dated February 9, 2001, setting forth the amount of electric energy purchased by the City from Calpine (the "Energy"), specifying certain terms and conditions of such purchase and modifying certain provisions of the WSPP Terms (collectively, the "Contract"); and

WHEREAS, pursuant to the Contract, the City is obligated to take and pay for the Energy purchased, resulting in the City's obligation to make installment purchase payments to Calpine in the amounts and at the times determined pursuant to the Contract; and

WHEREAS, since the City entered into the Contract, the State has initiated an electric energy conservation program which has resulted in a reduction of the electric load requirements of retail customers throughout the State, including within the City; and

WHEREAS, since the City entered into the Contract, the State has supported and encouraged, through modifications to the power plant approval process and other means, the construction of new power plants, the repowering of older power plants to increase production and an expansion of the facilities to import power and natural gas into the State from other areas of the United States; and

WHEREAS, the reduction in electric load, the increase of electric production facilities, an increase in the supply of, and reduction in the cost of, natural gas, the regulation of maintenance schedules for power plants and other factors have significantly reduced the demand or the rate of growth of demand for electricity in the State, including the City, and resulted in an increase in the supply, and reduced the cost, of electricity in the short-term markets; and

WHEREAS, as a result of the factors described above and other factors discussed with this City Council, much of the Energy is expected to be sold by the City at prices which the City anticipates will be significantly below the price paid for the Energy by the City; and

WHEREAS, the City has determined that it is in its best economic interests to provide for the sale of the Energy in one transaction rather than selling portions of the Energy in multiple transactions over time; and

WHEREAS, the City has determined that the best economic use by the City of, and the best return to the City for the sale of, the Energy can be achieved by selling the Energy to Calpine in a single transaction; and

WHEREAS, the City has determined to sell the Energy to Calpine on the terms and conditions set forth in an amendment to the Contract denominated Amendment Number One to Electric Energy Purchase Agreement (the "Amendment"); and

WHEREAS, the City and Calpine have agreed upon the purchase price for the Energy purchased by Calpine pursuant to the Amendment and have also agreed to net the payments due from the City for its purchase of the Energy from Calpine against the payments due from Calpine for its purchase of the Energy from the City; and

WHEREAS, the City and Calpine have agreed that the netting of such amounts payable by the respective parties is properly reflected by the City making installment payments (the "Installment Payments") at the times and in the amounts set forth in the Amendment; and

WHEREAS, the Installment Payments are to be paid from available revenues of the City's Electric System; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI, AS FOLLOWS:

Section 1. This City Council hereby specifically finds and determines that the actions authorized hereby constitute and are with respect to the public affairs of the City and that the statements, findings and determinations set forth above and in the preambles of the Amendment approved herein are true and correct. This City Council hereby specifically further finds and determines that the consummation of the transactions contemplated in this Resolution and in the Amendment shall result in significant public benefits to the City in that the City expects to improve the costs and liquidity requirements of the Electric System's operations through sale of the Energy as provided in the Amendment.

Section 2. The Amendment proposed to be executed and entered into by the City and Calpine, in the form presented at this meeting and on file with the City Clerk, and the performance by the City of its obligations thereunder, are hereby approved, and each of the City Manager and the Finance Director (each a "Designated Officer") is hereby severally authorized and directed to execute the Amendment, for and in the name and on behalf of the City, and deliver the Amendment to Calpine. The Amendment shall be in substantially the form presented to this meeting and on file with the City Clerk; provided however the Amendment may also include a pledge of the net revenues of the City's Electric System on a basis consistent with the City's agreements and obligations relating to such net revenues and such other nonsubstantive changes therein as the Designated Officer executing the Amendment may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The provisions of the Amendment requiring or authorizing the assignment of Calpine's rights to receive the Installment Payments, and certain rights related to the Installment Payments, including without limitation the rights to enforce the payment thereof and the other covenant obligations of the City in connection with the Installment Payments are hereby specifically approved. Such assignment provisions contemplate, and are included in the Amendment to facilitate, third parties obtaining rights and benefits under the Amendment directly through such assignment, through an offering of certificates of participation in the Installment Payments by or on behalf of an assignee, or through some other structure to securitize the cash flow of the Installment Payments. As a result the Amendment constitutes a contract within the meaning of Section 53511 of the Government Code of the State for purposes of Sections 860 and 863 of the Code of Civil Procedure of the State.

Section 4. The City Clerk is hereby authorized and directed to attest the signature of the Designated Officer executing the Amendment on behalf of the City, and to affix and attest the seal of the City thereto, as may be required or appropriate in connection with the execution and delivery of the Amendment.

Section 5. Each appropriate officer, employee or agent of the City is hereby severally authorized and directed to do any and all things and to execute and deliver any and all certificates, documents and instruments which he or she may deem necessary or desirable in order to consummate the transactions authorized hereby and to carry out, give effect to and comply with the terms and intent of this Resolution and the Amendment. All such actions heretofore taken by any officer, employee or agent of the City is hereby ratified, confirmed and approved.

Section 6. This Resolution shall take effect immediately upon its passage.

Date: September 4, 2002

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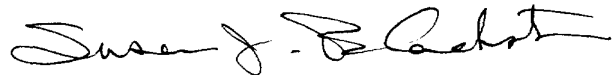
I hereby certify that Resolution 2002-189 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 4, 2002 by the following votes:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

NOES: COUNCIL MEMBERS - None

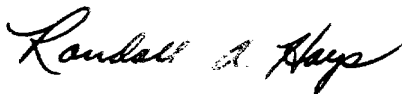
ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS - None



SUSAN J. BLACKSTON
City Clerk

Approved As to Form:



Randall A. Hays
City Attorney

2002-189

DRAFT

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RESOLUTION NO. 02-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI
APPROVING THE FORM OF, AND AUTHORIZING THE EXECUTION AND
DELIVERY OF, AN AMENDMENT TO AN ELECTRIC ENERGY PURCHASE
AGREEMENT AND AUTHORIZING CERTAIN OTHER MATTERS
RELATING THERETO**

WHEREAS, the City of Lodi (the "City"), a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "State"), owns and operates a municipal electric utility system (the "Electric System") providing electric service to the inhabitants of the City; and

WHEREAS, in order to satisfy the electric service requirements of the inhabitants of the City, the City has entered into contracts for the purchase of electric capacity and energy and capacity rights in electric transmission facilities; and

WHEREAS, due to a financial crisis of the investor-owned utilities in the State and a reduction in the amount of electricity available for purchase to serve consumers in the State, the Governor of the State declared a state of emergency and the State, through the Department of Water Resources, commenced purchasing electricity to serve the loads of the customers of the investor-owned utilities; and

WHEREAS, the conditions leading to the Governor's declaring a state of emergency created uncertainty as to whether the City would be able to purchase power in the short-term markets to satisfy the load requirements of the inhabitants of the City; and

WHEREAS, the City, together with certain other members of the Northern California Power Agency ("NCPA"), acting through NCPA, arranged for the purchase of electric energy from Calpine Energy Services, L. P. ("Calpine"), on the terms and conditions of the Western Systems Power Pool Agreement (version effective July 1, 2000) (the "WSPP Terms") and CAISO confirmations which would contain the specific terms of the energy purchase; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into a long-term, fixed-price electric energy purchase agreement with Calpine consisting of the WSPP Terms and the CAISO Confirmation, dated February 9, 2001, setting forth the amount of electric energy purchased by the City from Calpine (the "Energy"), specifying certain terms and conditions of such purchase and modifying certain provisions of the WSPP Terms (collectively, the "Contract"); and

WHEREAS, pursuant to the Contract, the City is obligated to take and pay for the Energy purchased, resulting in the City's obligation to make installment purchase payments to the Calpine in the amounts and at the times determined pursuant to the Contract; and

WHEREAS, since the City entered into the Contract, the State has initiated an electric energy conservation program which has resulted in a reduction of the electric load requirements of retail customers throughout the State, including within the City; and

WHEREAS, since the City entered into the Contract, the State has supported and encouraged, through modifications to the power plant approval process and other means, the construction of new power plants, the repowering of older power plants to increase production and an expansion of the facilities to import power and natural gas into the State from other areas of the United States; and

WHEREAS, the reduction in electric load, the increase of electric production facilities, an increase in the supply of, and reduction in the cost of, natural gas, the regulation of maintenance schedules for power plants and other factors have significantly reduced the demand or the rate of growth of demand for electricity in the State, including the City, and resulted in an increase in the supply, and reduced the cost, of electricity in the short-term markets; and

WHEREAS, as a result of the factors described above and other factors discussed with this City Council, much of the Energy is expected to be sold by the City at prices which the City anticipates will be significantly below the price paid for the Energy by the City; and

WHEREAS, the City has determined that it is in its best economic interests to provide for the sale of the Energy in one transaction rather than selling portions of the Energy in multiple transactions over time; and

WHEREAS, the City has determined that the best economic use by the City of, and the best return to the City for the sale of, the Energy can be achieved by selling the Energy to Calpine in a single transaction; and

WHEREAS, the City has determined to sell the Energy to Calpine on the terms and conditions set forth in an amendment to the Contract denominated Amendment Number One to Electric Energy Purchase Agreement (the "Amendment"); and

WHEREAS, the City and Calpine have agreed upon the purchase price for the Energy purchased by Calpine pursuant to the Amendment and have also agreed to net the payments due from the City for its purchase of the Energy from Calpine against the payments due from Calpine for its purchase of the Energy from the City; and

WHEREAS, the City and Calpine have agreed that the netting of such amounts payable by the respective parties is properly reflected by the City making installment payments (the "Installment Payments") at the times and in the amounts set forth in the Amendment; and

WHEREAS, the Installment Payments are to be paid from available revenues of the City's Electric System; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been

performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI, AS FOLLOWS:

Section 1. This City Council hereby specifically finds and determines that the actions authorized hereby constitute and are with respect to the public affairs of the City and that the statements, findings and determinations set forth above and in the preambles of the Amendment approved herein are true and correct. This City Council hereby specifically further finds and determines that the consummation of the transactions contemplated in this Resolution and in the Amendment shall result in significant public benefits to the City in that the City expects to improve the costs and liquidity requirements of the Electric System's operations through sale of the Energy as provided in the Amendment.

Section 2. The Amendment proposed to be executed and entered into by the City and Calpine, in the form presented at this meeting and on file with the City Clerk, and the performance by the City of its obligations thereunder, are hereby approved, and each of the City Manager and the Finance Director (each a "Designated ~~Designated~~ Officer") is hereby severally authorized and directed ~~to execute the Amendment~~, for and in the name and on behalf of the City, to execute and deliver ~~the Amendment~~ to Calpine ~~the~~. ~~The Amendment shall be in substantially said the form, presented to this meeting and on file with the City Clerk; provided however the Amendment may also include a pledge of the net revenues of the City's Electric System on a basis consistent with the City's agreements and obligations relating to such net revenues and such other nonsubstantive changes therein as the Designated Officer executing such the document Amendment may approve, such approval to be conclusively evidenced by the execution and delivery thereof.~~

Section 3. The provisions of the Amendment requiring or authorizing the assignment of Calpine's rights to receive the Installment Payments, and certain rights related to the Installment Payments, including without limitation the rights to enforce the payment thereof and the other covenant obligations of the City in connection with the Installment Payments are hereby specifically approved. Such assignment provisions contemplate, and are included in the Amendment to facilitate, third parties obtaining rights and benefits under the Amendment directly through such assignment, through an offering of certificates of participation in the Installment Payments by or on behalf of an assignee, or through some other structure to securitize the cash flow of the Installment Payments. As a result the Amendment constitutes a contract within the meaning of Section 53511 of the Government Code of the State for purposes of Sections 860 and 863 of the Code of Civil Procedure of the State.

Section 4. The City Clerk is hereby authorized and directed to attest the signature of the Designated Officer executing the Amendment on behalf of the City, and to affix and attest the seal of the City thereto, as may be required or appropriate in connection with the execution and delivery of the Amendment.

Section 5. Each appropriate officer, employee or agent of the City is hereby severally authorized and directed to do any and all things and to execute and deliver any and all certificates, documents and instruments which he or she may deem necessary or desirable in order to consummate the transactions authorized hereby and to carry out, give effect to and comply with the terms and intent of this Resolution and the Amendment. All such actions heretofore taken by any officer, employee or agent of the City is hereby ratified, confirmed and approved.

Section 9. This Resolution shall take effect immediately upon its passage.

Date: September 4, 2002

I hereby certify that Resolution 02-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 4, 2002 by the following votes:

AYES: Council Members -

NOES: Council Members -

ABSENT: Council Members -

Susan J. Blackston
City Clerk

Approved As to Form:

Randall A. Hays
City Attorney

Document comparison done by DeltaView on Wednesday, September 04, 2002
14:28:00

Input:	
Document 1	PowerDocs://DOCSLA1/427695/1
Document 2	PowerDocs://DOCSLA1/427695/2
Rendering set	OHS Strikethrough No Moves

Legend:	
<u>Insertion</u>	
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<u>Moved from</u>	
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<u>Format change</u>	
<u>Moved deletion</u>	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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	Count
Insertions	11
Deletions	9
Moved from	0
Moved to	0
Format changed	0
Total changes	20

AMENDMENT NUMBER ONE TO ELECTRIC ENERGY PURCHASE AGREEMENT

by and between

CITY OF LODI

and

CALPINE ENERGY SERVICES, L.P.

Dated as of September 1, 2002

AMENDMENT NUMBER ONE TO ELECTRIC ENERGY PURCHASE AGREEMENT

This Amendment Number One to Electric Energy Purchase Agreement (this "Amendment"), dated as of September 1, 2002, by and between the City of Lodi, California, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and Calpine Energy Services, L.P., a limited partnership duly organized and existing under and by virtue of the laws of the State of Delaware ("Calpine") (each of the City and Calpine being herein referred to individually as a "Party" or collectively as the "Parties"),

W I T N E S S E T H:

WHEREAS, the City has established the Electric System (capitalized terms used in this Amendment and not otherwise defined shall have the meanings given such terms in Exhibit A to Part III) to serve the inhabitants of the City; and

WHEREAS, pursuant to the Public Utilities Code of the State, the City is authorized to acquire, own, control sell or exchange rights of every nature for the purpose of operating the Electric System; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into the Original Agreement with Calpine providing for the purchase by the City of the Energy for the term of the Original Agreement, establishing the fixed-price to be paid for the Energy by the City and specifying the terms and conditions of such purchase; and

WHEREAS, pursuant to the Original Agreement, the City is obligated to take and pay for the Energy has delivered, resulting in the City's obligation to make installment purchase payments to Calpine in the amounts and at the times determined pursuant to the Original Agreement; and

WHEREAS, the City has determined to sell its interests in the Energy to Calpine, and Calpine has determined to purchase the City's interests in the Energy, on the terms and conditions set forth in this Amendment; and

WHEREAS, the City and Calpine have agreed upon the purchase price for the City's interests in the Energy and have also agreed to net the payments due from the City for its purchase of the Energy from Calpine pursuant to the Original Agreement against the payments due from Calpine for its purchase of the City's interests in the Energy pursuant to this Amendment; and

WHEREAS, the City and Calpine have agreed that the netting of such amounts payable by the respective Parties is properly reflected by the City making the Installment Payments at the times and in the amounts set forth in Exhibit B to Part III; and

WHEREAS, the Installment Payments are to be paid from available Net Revenues of the City's Electric System; and

WHEREAS, all acts, conditions and things required by the laws of the State to exist, to have happened and to have been performed precedent to and in connection with the City's entering into this Amendment and the consummation on the part of the City of the transactions set forth in this Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to enter into this Amendment and to consummate such transactions for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

PART I

GENERAL PROVISIONS OF AMENDMENT

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in Exhibit A to Part III of the Agreement shall for all purposes of this Part I and of any amendment hereof or supplement hereto and of any opinion or report or other document mentioned herein have the meanings given such terms in said Exhibit A to Part III.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Mutual Representations. The Parties each represent and warrant to the other Parties that (i) it is duly formed and in good standing under the laws of the State of California, in the case of the City, or the State of Delaware, in the case of Calpine, (ii) it has all necessary power, authority and legal right to enter into, deliver and perform its respective obligations under the Amendment, (iii) the execution, delivery and performance of the Amendment by such Party have been duly authorized by all necessary action, (iv) all consents and approvals necessary for the execution, delivery and performance of the Amendment by such Party have been obtained, and (v) the Amendment is the legal, valid and binding obligation of such Party, enforceable in accordance with its respective terms.

Section 2.02. City Representations. The City further represents and warrants that (i) all acts necessary to the valid execution, delivery and performance of the Amendment, including without limitation competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the City's ordinances, bylaws or other regulations and under California law, (ii) all persons making up the City Council of the City are duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with California law, (iii) entry into and performance of the Amendment by the City are for a proper public purpose under California law, (iv) the terms of the Amendment do not extend beyond any applicable limitation imposed by California law, and (v) the City's obligations to make the Installment Payments from Net Revenues are unsubordinated obligations and are on a parity with any and all bonds or other evidences of indebtedness issued by the City under applicable California law, and (v) the City's obligations to make the Installment Payments do not violate California law, any order or judgment of any court or other agency of government applicable to the City or its assets, or any contractual restriction binding on or affecting the City or any of its assets.

ARTICLE III

PARTS OF AGREEMENT

Section 3.01. Agreement Divided into Parts. The Agreement, as amended and supplemented by this Amendment, shall be divided into three Parts as follows: Part I shall consist of those provisions designated as Part I of this Amendment; Part II shall consist of the Original Agreement; and Part III shall consist of those provisions designated as Part III in this Amendment.

Section 3.02. Purpose of Division into Parts. The purpose of the division of the Agreement into the Parts is to recognize and provide that, upon the Effective Date: (i) the provisions of each of the Parts of the Agreement shall operate independently of the other Parts and the performance of a Party's obligations under any Part of the Agreement shall not be dependent or conditioned upon the other Party's performance under any other Part of the Agreement and each and every agreement and obligation of a Party under a Part of the Agreement may be enforced by the other Party notwithstanding the failure of such enforcing Party to have fully performed its agreements and obligations under any other Part of the Agreement; (ii) except to the extent expressly amended by this Amendment, the provisions of Part II of the Agreement shall constitute the entire agreement of the Parties hereto with respect to the subject matter included in such Part II and shall supercede any other agreement, understanding or arrangement, whether written or oral, between the Parties with respect to the subject matter of such Part II, including without limitation events of defaults and remedies under another Part of the Agreement; (iii) Calpine is both the seller and buyer of the Energy pursuant to the Agreement and as a result Part II of the Agreement is satisfied, discharged and terminated with the result that Calpine shall have no further obligations or liability under Part II, but such satisfaction, discharge and termination shall not affect any other Part of the Agreement or the rights and obligations of the Parties under any other Part of the Agreement, including without limitation the City's obligations to make the Installment Payments and to perform its other

obligations under Part III of the Agreement; (iv) the termination of Part II of the Agreement releases Calpine from any obligation to deliver Energy under Part II of the Agreement and the City from any obligation to take Energy under the Part II of the Agreement, but does not affect the City's obligation to make the Installment Payments as provided in Part III of the Agreement; (v) the payment obligations of the City for the purchase of the Energy pursuant to the Original Agreement have been netted against the payment obligation of Calpine for the purchase of all of the City's right, title and interest in and to the Energy pursuant to Section 2.01 of Part III of the Agreement, with the result that, in all events and without regard to Calpine's performance or nonperformance of any obligations under Part II of the Agreement, the City remains liable for the payment of the Installment Payments from available Net Revenues at the times and in the amount set forth in Exhibit B to Part III of the Agreement which the Parties agree properly reflect such netting of payments; (vi) any assignment of Calpine's right, title and interest in and to the Installment Payments pursuant to Section 4.01 of this Part I shall include an assignment of all of Calpine's rights under Parts I and III of the Agreement, together with the right to enforce all of the City's obligations and covenants contained in Parts I and III of the Agreement; and (vii) that the City's obligations under Part III of the Agreement shall continue in full force and effect until satisfied as provided in said Part III notwithstanding the satisfaction of all the obligations of the Parties under, and the termination of, Part I and/or Part II of the Agreement or the completion of all the transactions contemplated by Part I and/or Part II of the Agreement, and/or the termination or satisfaction of any or all the provisions of Part I and/or Part II of the Agreement.

ARTICLE IV

ASSIGNMENT OF INSTALLMENT PAYMENTS

Section 4.01. Assignment of Rights to Corporation. Calpine hereby irrevocably grants to the Corporation the right and option to purchase, and upon the exercise of such right and option as provided in this Section, Calpine shall sell, transfer and assign, all of Calpine's right, title and interest in and to Parts I and III of the Agreement, including all rights to the Installment Payments and the right enforce the City's obligations under Part III of the Agreement to pay the Installment Payments and to comply with the other covenants and agreements of the City contained in Part III of the Agreement. The right and option granted to the Corporation in this Section shall expire on the Option Expiration Date. The right and option granted to the Corporation in this Section may be exercised by the delivery to Calpine (or if Calpine's rights under Parts I and III of the Agreement have been sold, transferred and assigned pursuant to Section 4.02 of this Part I, the assignee of such rights), by or on behalf of the Corporation, on any Business Day on or before the Option Expiration Date of an amount of money constituting legal tender of the United States of America equal to the Option Amount as of the date of such delivery. The City shall give, or cause to be given, notice of the payment of the Option Amount not less than two (2) days prior to the date of such payment unless Calpine (or if Calpine's rights under Part III of the Agreement have been sold, transferred and assigned pursuant to Section 4.02 of this Part I, the assignee of such rights) waives such notice by accepting the payment of the Option Amount.

Section 4.02. Rights of Calpine to Assign. Calpine shall have the right to sell, transfer and assign, and to grant options to acquire, all of Calpine's right, title and interest in and to Parts I and III of the Agreement, including all rights to the Installment Payments and the right to enforce the City's obligations under Part III of the Agreement to pay the Installment Payments and to comply with the other covenants and agreements contained in Part III of the Agreement, to any person or entity selected by Calpine provided that any such sale, transfer and assignment shall expressly provide that it is subject to the rights granted to the Corporation pursuant to Section 4.01 of this Part I and Calpine shall provide the City with a written acknowledgement of the assignee that the rights it is acquiring are so subject to the rights granted to the Corporation pursuant to said Section 4.01. The provisions of this Section shall apply to each sale, transfer and assignment of Calpine's rights under Parts I and III of the Agreement made on or prior to the Option Expiration Date whether made by Calpine, the initial assignee or any subsequent assignee.

Section 4.03. Parties to Cooperate in any Assignment. The City hereby agrees and consents to any assignment made pursuant to Section 4.01 or Section 4.02 of this Part I. Each Party agrees that it will take such actions and adopt, deliver, execute and make any and all further assurances, instruments and documents as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of any assignment of Calpine's rights under Parts I and III of the Agreement in accordance with Section 4.01 or Section 4.02 of this Part I for the better assuring and confirming unto the assignee all of the rights and benefits provided to it pursuant to such assignment.

Section 4.04. Settlement of Claims. Each Party agrees, on behalf of itself and its respective successors and assignees, that this Amendment and the transactions contemplated hereby are intended to fully and finally settle and resolve any and all claims of any nature whatsoever that any of them may now or hereafter have or any disputes that may have arisen or later arise under or with respect to the Original Agreement and the transactions contemplated thereby (collectively, "Claims"), including without limitation any Claims that the City, its successors and assignees, may now or hereafter have under Section 206 of the Federal Power Act. Each Party, on behalf of itself and its respective successors and assignees, hereby waives, releases, acquits and discharges the other Party, its successors and assignees, from all Claims. Each Party, on behalf of itself and its respective successors and assignees, expressly waives the benefit of any statutory provision or common law rule that provides that a release does not extend to claims which the Party does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with the other Party. In particular, but without limitation, each Party, on behalf of itself and its respective successors and assignees, expressly waives the provisions of California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each Party, or its respective successors and assignees, may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the Claims herein released, but each Party hereby expressly waives and fully, finally and forever settles and releases any and all known or unknown Claims, without regard to the subsequent discovery or existence of such different or additional facts.

ARTICLE V

MISCELLANEOUS

Section 5.01. Amendments. This Part I may not be supplemented, amended, modified or terminated in any manner except by a written instrument signed by the City and Calpine.

Section 5.02. Part I Limited to Parties. Nothing contained in this Part I, expressed or implied, is intended to give to any person other than the City and Calpine, and their respective successors and any assignees pursuant to Section 3.01 or 3.02 of this Part I, any right, remedy or claim under or pursuant thereto, and any agreement or covenant required herein to be performed by or on behalf of the City or Calpine shall be for the sole and exclusive benefit of the other Party and such permitted successors and assignees.

Section 5.03. Successor Is Deemed Included in all References to Predecessor. Whenever either Calpine or the City is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in Calpine or the City, as applicable, and all agreements and covenants required hereby to be performed by or on behalf of Calpine or the City shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 5.04. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections of this Part I and any table of contents appended to the Amendment shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. Unless otherwise expressly provided, all references herein to "Articles," "Sections," "Exhibits" and other subdivisions or clauses are to the corresponding articles, sections, exhibits, subdivisions or clauses of this Part of the Agreement cited; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Part I of the Agreement as a whole and not to any particular article, section, exhibit, subdivision or clause of this Part I.

Section 5.05. Partial Invalidity. If any one or more of the agreements or covenants contained in this Part I, or portions thereof, required hereby to be performed by or on the part of Calpine or the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from

the remaining agreements and covenants or portions thereof and shall in no way affect the validity thereof. Calpine and the City hereby declare that they would have executed this Part I, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof, irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 5.06. Entire Agreement. The provisions of this Part I, including those provisions of other Parts of the Agreement mentioned in this Part I, shall constitute the entire agreement of the Parties hereto with respect to the subject matter included in this Part I and shall supercede any other agreement, understanding or arrangement, whether written or oral, between the Parties with respect to the subject matter of this Part I, including without limitation events of defaults and remedies under another Part of the Agreement.

Section 5.07. California Law. This Part I shall be construed and governed in accordance with the laws of the State with respect to contracts made and to be performed in the State.

Section 5.08. Effective Date. This Part I shall become effective on the Effective Date and shall remain in full force and effect until all the transactions contemplated by this Part I have been completed and all obligations of each of the Parties hereto have been satisfied.

Section 5.09. Execution in Counterpart. This Amendment, including the provisions of Part I and Part III of the Agreement, may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

PART III

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in Exhibit A to this Part III, shall for all purposes of this Part III and of any amendment hereof or supplement hereto and of any opinion or report or other document mentioned herein have the meanings given such terms said Exhibit A.

ARTICLE II

SALE OF INTERESTS IN ENERGY

Sale of City's Interest in Energy. The City hereby sells, assigns and transfers to Calpine, and Calpine hereby purchases from the City, all of the City's right, title and interest in and to the Energy and to enforce any rights or obligations related to the purchase or delivery of the Energy. Such right, title and interest of the City in and to the Energy shall be fully vested in Calpine on and as of the Effective Date. The sale, assignment and transfer by the City of its right, title and interest in and to the Energy is made without recourse and no warranties, either express or implied, as to the availability of the Energy or otherwise is made by the City in connection with such sale, assignment and transfer other than the City represents and warrants that it has taken no action which would encumber its title to the Energy, or the rights and obligations related thereto or the proceeds thereof, or otherwise create a lien on, or security or other interest in, the Energy, or the rights and obligations related thereto or the proceeds thereof, or which would in any way prevent or impair the City's ability to make such sale, assignment or transfer.

Section 2.01. Purchase Price of Energy. In consideration of the sale, assignment and transfer of all of the City's right, title and interest in and to the Energy, Calpine agrees to pay \$34.96 per MWh based on the scheduled amount of Energy to be made available to the City pursuant to the Original Agreement. Subject to the netting of payment obligations pursuant to Section 2.02 of this Part III, such payments are to be made at the times and for the Energy that payment is to be made for the Energy by the City pursuant to the Original Agreement.

Section 2.02. Netting of Payment. Each of the Parties agree that the City's obligation to make payments for the Energy to be delivered pursuant to the Original Agreement and Calpine's obligations to pay for the purchase of the City's right, title and interest in and to the Energy pursuant to Section 2.01 of this Part III shall be netted against each other and that such netting of payment obligations properly results and is properly reflected in the City's obligation to make the Installment Payments as provided in Section 3.01 of this Part III.

ARTICLE III

INSTALLMENT PAYMENTS AND PREPAYMENTS

Section 3.01. Installment Payments. The City shall, subject to any rights of prepayment provided in Section 3.02 of this Part III and the exercise of any remedies under Article V of this Part III, pay the Installment Payments (as the netted amount due as a result of the purchase of the Energy by the City pursuant to the Original Agreement and the purchase by Calpine of the City's right, title and interest in and to the Energy pursuant to Section 2.01 of this Part III) at the times and in the amounts set forth in Exhibit B to this Part III.

The obligation of the City to pay the Installment Payments is, subject to Section 7.01 of this Part III, absolute and unconditional, and until such time as the Installment Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Section 6.01 hereof to the extent applicable), the City will not discontinue or suspend any Installment Payments required to be paid by it under this Section when due for any reason, including without limitation the reasons set forth in Section 4.01 of this Part III, and such Installment Payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditioned upon the performance or nonperformance by any Party to the Agreement, or any Party to any other agreement or arrangement with respect to the City or its property or operations, including without limitation the Electric System or its operations, or for any other reason or cause whatsoever.

Section 3.02. Prepayments. The City shall have the right at any time or from time to time from any available funds to prepay all or any part of the Installment Payments at the applicable Prepayment Price. Upon any such prepayment made in accordance with this Section, Calpine, including any assignee of Calpine pursuant to Article III of Part I of the Agreement, shall accept such prepayment and the City's obligations to make Installment Payments shall be reduced accordingly. Upon any such partial prepayment of the Installment Payments, Exhibit B to this Part III shall be revised to take such prepayment into account and to reflect the amount of the Installment Payments remaining to be paid by the City on each remaining Installment Payment date set forth in said Exhibit B.

With respect to prepayments of Installment Payments pursuant to this Section, the City shall determine the amount of the Installment Payments to be prepaid (but no partial prepayment of Installment Payments shall be in an amount less than \$250,000) and, subject to the provisions of this Section, the date on which each such prepayment is to be made. Before making any prepayment pursuant to this Section, the City shall give written notice to Calpine (or its permitted assignee) specifying the date on which the prepayment will be paid, which date shall be a Business Day not less than ten (10) days from the date such notice is given; provided, that notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including specifically its obligations under this Article, until all Installment Payments shall have been fully paid (or provision for payment thereof shall have been made pursuant to Section 6.01 hereof to the extent such Section is applicable).

ARTICLE IV

COVENANTS OF THE CITY

Section 4.01. Payment of Installment Payments. The City will punctually pay the Installment Payments in strict conformity with the terms of this Part III, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained in this Part III required to be observed and performed by it, and will not fail to make any Installment Payment required by this Part III for any reason or cause including, without limiting the generality of the foregoing, the completion, satisfaction, discharge or termination of any other Part of the Agreement, any acts or circumstances that may constitute failure of consideration, destruction of or damage to all or a portion of any property of the City, including without limitation the Electric System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of Calpine or any other Party to observe or perform any agreement, condition, covenant or term contained in this Part III or in any other Part of the Agreement or any other agreement or arrangement affecting the City, its property or operations, required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected with any of the foregoing or the insolvency, or deemed insolvency, or bankruptcy or liquidation of Calpine or any other Party or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

Section 4.02. Against Encumbrances on Electric System. The City will pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or for the City in, upon, about or relating to the Electric System and will keep the Electric System free of any and all liens against any portion of the Electric System, including without limitation any liens securing indebtedness or other payment obligations. In the event any such lien attaches to or is filed against any portion of the Electric System, the City will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so if contesting such lien will not impair operation of the Electric System. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment.

Section 4.03. Sale or Other Disposition of Electric System. The City will not sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part or rights of the Electric System or any real or personal property comprising a part of the Electric System if such sale, transfer or disposition would adversely affect the City's ability to satisfy the requirements of Section 4.09 of this Part III.

Section 4.04. Maintenance and Operation of the Electric System; Budgets. The City will maintain and preserve the Electric System in good repair and working order at all times in accordance with prudent engineering and operating practices and will operate the Electric System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable. The City will adopt, not later than October 1 of each year, a budget for the Electric System for such Fiscal Year, providing that all Maintenance and Operation Costs, all Installment Payments and all other amounts which the City determines are to be paid from the Revenues during such Fiscal Year have been included in such budget; provided, that any such budget may be amended at any time during any Fiscal Year provided such amended budget shall include provision for the payment of all Maintenance and Operation Costs, all Installment Payments and all other amounts which the City determines are to be paid from the Revenues during such Fiscal Year.

Section 4.05. Insurance. The City will procure and maintain such insurance relating to the Electric System which it shall deem advisable or necessary to protect its interests, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with public electric utility systems similar to the Electric System; provided, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner as is, in the opinion of an accredited actuary, actuarially sound.

Section 4.06. Accounting Records; Financial Statements and Other Reports.

(a) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Electric System, which records shall be available for inspection by Calpine at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with Calpine annually within one hundred twenty (120) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 2002):

(i) financial statements of the City for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon; and

(ii) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Electric System as of the close of such Fiscal Year, including the names of the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

(c) The City shall from time to time provide Calpine or its successor or assignee such information as Calpine or its successor or assignee may reasonably request with respect to the financial condition of the City and the Electric System, the insurance (including self-insurance) maintained by the City with respect to the Electric System, and any other matters reasonably related to the City's performance of or ability to perform its obligations under this Part III.

Section 4.07. Protection of Security and Rights of Calpine. The City will preserve and protect the security of the Installment Payments under this Part III and the rights of Calpine to the Installment Payments under this Part III and will warrant and defend such rights against all claims and demands of all persons.

Section 4.08. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Electric System or any part thereof when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Electric System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith and contesting such validity or application will not materially impair the operations or financial condition of the Electric System, will not result in the imposition of a lien on the Electric System in violation of Section 4.02 of this Part III and will not impair the City's ability to make the Installment Payments as and when due.

Section 4.09. Amount of Rates and Charges. The City will at all times fix, prescribe and collect rates and charges for the services, facilities and electricity of the Electric System during each Fiscal Year which will be at least sufficient to yield Revenues for such Fiscal Year at least equal to the sum of the following for such Fiscal Year: (i) Maintenance and Operation Costs; (ii) the Installment Payments, (iii) all other payments required to meet any other obligations of the City which are charges, liens or encumbrances upon or payable from the Revenues, and (iv) reasonable and prudent reserves for maintenance, capital expenditures and customers' delinquencies or failures to pay. The City may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this Section.

Section 4.10. Collection of Rates and Charges. The City will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Electric System to pay the rates and charges applicable to the Electric Service provided to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The City will not permit any part of the Electric System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State and any city, county, district, political

subdivision, public corporation or agency of any thereof). Nothing herein shall prevent the City, in its sole and exclusive discretion, from permitting other Parties from selling electricity to retail customers within the service area of the Electric System; provided, however, that permitting such sales shall not relieve the City of its obligations hereunder.

Section 4.11. Eminent Domain and Insurance Proceeds. If all or any part of the Electric System shall be taken by eminent domain proceedings, or if the City receives any insurance proceeds resulting from a casualty loss to the Electric System, the net proceeds thereof, at the option of the City, shall be applied either to the ratable prepayment of obligations payable from the Net Revenues or shall be used to repair, restore or substitute other components for the condemned, damaged or destroyed components of the Electric System.

Section 4.12. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Part III and for the better assuring and confirming unto Calpine (or any assignee of Calpine permitted hereunder) of the rights and benefits provided to it in this Part III.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default and Acceleration of Installment Payments. If one or more of the following Events of Default shall happen and be continuing, that is to say:

(a) if default shall be made in the due and punctual payment of any Installment Payment when and as the same shall become due and payable;

(b) if default shall be made by the City in the performance of any of the agreements or covenants contained herein required to be performed by it under this Part III, other than as set forth in (a) above, and such default shall have continued for a period of thirty (30) days after the City shall have been given notice in writing of such default by Calpine; or

(c) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property;

then and in each and every such case, automatically and without the necessity of notice from Calpine or any other person during the continuance of such Event of Default specified in clause (c) above, or upon notice in writing from Calpine to the City with respect to any other such Event of Default, all unpaid Installment Payments shall become due and payable immediately in an amount equal to the Default Price as of the date of payment of the Default Price, anything contained in this Part III to the contrary notwithstanding. This Section is subject to the condition, however, that if at any time after the unpaid Principal Installments (in an amount equal to aforementioned Default Price) shall have become due and payable pursuant to this Section, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the City shall deposit with Calpine a sum sufficient to pay the unpaid amount of the Installment Payments due otherwise then as a result of such declaration, and the City shall have paid the reasonable expenses of Calpine resulting from such declaration, and any and all other defaults known to Calpine (other than in the payment of the unpaid Installment Payments in an amount equal to the aforementioned Prepayment Price) due and payable solely by reason of the acceleration of such Installment Payments pursuant to this Sections) shall have been made good or cured to the satisfaction of Calpine or provision deemed by Calpine to be adequate shall have been made therefor, then and in every such case Calpine, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 5.02. Other Remedies. Calpine shall also have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any officer or employee thereof, and to compel the City or any such officer or employee to perform and carry out its or his or her duties under the law and the agreements and covenants required to be performed by it or him or her contained in this Part III;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of Calpine; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its officers and employees to account as the trustee of an express trust.

Section 5.03. Non-Waiver. Nothing in this Article or in any other provision of this Part III shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments from the Net Revenues to Calpine at the respective due dates or upon acceleration or prepayment, or shall affect or impair the right of Calpine, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in this Part III.

A waiver of any default or breach of duty or contract by Calpine shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by Calpine to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon Calpine by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by Calpine.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to Calpine, the City and Calpine shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 5.04. Remedies Not Exclusive. No remedy herein conferred upon or reserved to Calpine is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

Section 5.05. Waiver of Sovereign Immunity. To the extent permitted by law and subject to Section 7.01 of this Part III, the City hereby waives and agrees not to assert any immunity, on the grounds of sovereignty or otherwise, with respect to itself and its assets, the Electric System or the Revenues, from suit, jurisdiction of any court otherwise having jurisdiction, relief by way of mandamus, specific performance, injunction or recovery of damages, or execution or enforcement of any judgment hereunder.

ARTICLE VI

DISCHARGE OF OBLIGATIONS

Section 6.01. Discharge of Obligations.

(a) If the City shall indefeasibly pay or cause to be paid all the Installment Payments at the times and in the manner provided herein, the right, title and interest of Calpine or any assignee of Calpine permitted hereunder in and to this Part III and the obligations of the City under this Part III shall cease, terminate, become void and be completely discharged and satisfied; provided, however, that if any such payment or payments are rescinded or must otherwise be returned by Calpine or its successors or assignees as a result of any insolvency, bankruptcy, reorganization or dissolution of the City or any other person, the City's obligations under this Part III shall be reinstated as if such payment or payments had not been made.

(b) Any unpaid Installment Payment shall on its payment date or date of prepayment be deemed to have been paid within the meaning of and with the effect expressed in

subsection (a) of this Section if the City makes payment of such Installment Payments when due or pays the applicable Prepayment Price with respect to the prepaid Installment Payments in the manner provided herein.

(c) After an assignment of Calpine's rights under this Part III of the Agreement to the Corporation pursuant to Section 3.01 of Part I of the Agreement, all or any portion of the unpaid Installment Payments shall, prior to its payment date or date of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this Section (except only that the right of the Corporation to receive Installment Payments and the obligation of the City to pay such Installment Payments but only out of the money and Defeasance Securities deposited with the Trustee for such payment) if: (i) there shall have been deposited with an escrow agent or trustee either money in an amount which shall be sufficient, or Defeasance Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form), the interest on and principal of which when paid will provide money which, together with money, if any, deposited with such escrow agent or trustee, shall be sufficient (as evidenced by a report of an Independent Certified Public Accountant regarding such sufficiency) to pay when due the portion of the Installment Payments or the applicable Prepayment Price thereof, or such portion of the Installment Payments to be deemed paid for purposes of this Section, on its payment date or its date of prepayment, as the case may be.

(d) After the payment, or provision for the payment as provided in subsection (c) of this Section, of all Installment Payments or the Prepayment Price thereof, as applicable, and payment in full of all fees and expenses of the Corporation, the Corporation, upon request of the City, shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and the Corporation shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such total discharge and satisfaction of Part III of the Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Liability of City Limited to Available Net Revenues. Notwithstanding anything contained herein, the City shall not be required to advance any moneys derived from any source of income other than the Net Revenues available for the payment of the Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The City may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Installment Payments is a special obligation of the City payable solely from the available Net Revenues as provided herein. The general fund of the

City is not liable, and neither the faith and credit nor the taxing power of the City is pledged, for the payment of the Installment Payments or the performance or satisfaction of any other obligations of the City under this Part III.

Section 7.02. Amendments. This Part III shall not be supplemented, amended, modified or terminated in any manner except by an instrument in writing signed by the City and Calpine, or if Calpine's rights under this Part III have been assigned in accordance with Part I of the Agreement, by such assignee.

Section 7.03. Assignment of Contract. The City hereby acknowledges that Calpine has agreed to transfer and assign to the Corporation, and has the right to transfer and assign to others, all on the terms and conditions set forth in Part I of the Agreement, all of Calpine's right, title and interest in and to Part III of the Agreement, including without limitation its rights to the Installment Payments. Upon any such transfer and assignment references to Calpine in this Part III shall be construed for all purposes of this Part III to be references to the transferee and assignee of such rights.

Section 7.04. Benefits of Contracts Limited to Parties. Nothing contained in this Part III, expressed or implied, is intended to give to any person other than the City and Calpine, and their respective successors and any assignee pursuant to Section 3.01 or 3.02 of Part I of the Agreement, any right, remedy or claim under or pursuant thereto, and any agreement or covenant required herein to be performed by or on behalf of the City or Calpine shall be for the sole and exclusive benefit of the other Party and such permitted successors and assignees.

Section 7.05. Successor Is Deemed Included in all References to Predecessor. Whenever either Calpine or the City is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in Calpine or the City, and all agreements and covenants required hereby to be performed by or on behalf of Calpine or the City shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 7.06. Waiver of Personal Liability. No officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments or the performance or satisfaction of any other obligation of the City under this Part III, but nothing contained herein shall relieve any officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or by the terms of this Part III.

Section 7.07. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections of this Part III, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Part III, and words of any gender shall be deemed and construed to include all genders. Unless otherwise specifically provided, all references herein to "Articles," "Sections,"

“Exhibits” and other subdivisions or clauses are to the corresponding articles, sections, exhibits, subdivisions or clauses of this Part III; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith” and other words of similar import refer to this Part III as a whole and not to any particular article, section, exhibit, subdivision or clause of this Part III.

Section 7.08. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of Calpine or the City under this Part III shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions of this Part III and shall in no way affect the validity hereof. Calpine and the City hereby declare that they would have executed this Part III, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase of this Part III irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 7.09. Net Contract. This Part III shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Installment Payments and all other payments required under this Part III, free of any deductions and without abatement, diminution or set-off whatsoever.

Section 7.10. Term. This Part III shall become effective on the Effective Date and shall remain in full force and effect until all the Installment Payments have been made (or provided for in accordance with Section 6.01 if applicable).

Section 7.11. Entire Agreement. The provisions of this Part III, including those provisions of other Parts of the Agreement mentioned in this Part III and the applicable provisions of Part I (whether or not specifically mentioned), shall constitute the entire agreement of the Parties hereto with respect to the subject matter included in this Part III and shall supercede any other agreement, understanding or arrangement, whether written or oral, between the Parties with respect to the subject matter of this Part III, including without limitation events of defaults and remedies under another Part of the Agreement.

Section 7.12. California Law. This Part III shall be construed and governed in accordance with the laws of the State with respect to contracts made and to be performed in the State.

[Remainder of Page Intentionally left Blank.]

IN WITNESS WHEREOF, the Parties hereto have executed and attested this Amendment by their respective officers thereunto duly authorized, as of the day and year first written above.

CITY OF LODI

By: _____

Name: _____

Title: _____

Attest:

City Clerk

APPROVED:

City Attorney

CALPINE ENERGY SERVICES, L.P.

By: _____

Name: _____

Title: _____

EXHIBIT A TO PART III

DEFINITIONS

Definitions. Unless the context otherwise requires, the terms defined in this Exhibit A shall have the meanings herein specified:

“Accountant’s Report” means a written report signed by a Independent Certified Public Accountant.

“Agreement” means the Original Agreement as supplemented by the Amendment.

“Amendment” means the Amendment, supplementing the Original Agreement, dated as of September 1, 2002, as originally executed by the City and Calpine and as the provisions thereof may be amended and supplemented in accordance with the terms thereof.

“Business Day” means a day which is not a Saturday, Sunday or any other day banking institutions located in New York, New York or California are required or authorized to close.

“City” means the City of Lodi, a municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State.

“City Transfers” mean any payments from Revenues to the City for payments in-lieu of taxes, transfers to the City’s General Fund or similar payments but shall not include any item constituting a Maintenance and Operation Cost.

“Corporation” means the Lodi Public Improvement Corporation, a non-profit, public benefit corporation duly organized and existing under and by virtue of the laws of the State or such other nonprofit corporation or other entity as may be designated by the Lodi Public Improvement Corporation to exercise the option granted pursuant to Section 3.01 of Part I of the Agreement.

“Default Price” means, with respect to any prepayment of the Installment Payments pursuant to Section 5.01 of Part III of the Agreement, an amount equal to the present value of the Installment Payments as of the date of such prepayment determined using a discount rate of 7.0% per annum and a year of twelve, thirty day months.

“Effective Date” means, if the Amendment has been executed and delivered to the other Party on behalf of the City and Calpine, respectively, by such date, September [6], 2002. [The “Effective Date” should be two business days after execution due to scheduling.]

“Electric Service” means the services commodities and products furnished, made available or provided by the Electric System.

“Electric System” means the electric utility system of the City, comprising all electric generation, transmission and distribution facilities and all general plant facilities related thereto now owned by the City and all other properties, structures or works for the generation,

transmission or distribution of electricity hereafter acquired by the City, including all contractual rights for electricity or the transmission thereof, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof, or any additional contract rights for electricity or the transmission thereof, hereafter acquired.

“Event of Default” means with respect to Part III of the Agreement, an event described in Section 5.01 of such Part III.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the City Council of the City as the Fiscal Year of the City.

“Generally Accepted Accounting Principles” mean the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures selected by the City, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State, appointed and paid by the City, and whom, or each of whom: (a) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the City; (b) does not have a substantial financial interest, direct or indirect, in the operations of the City; and (c) is not connected with the City as a director, officer or employee of the City, but who may be regularly retained to audit the accounting records of, and make reports thereon to, the City.

“Installment Payments” mean the Installment Payments set forth in Exhibit B to Part III of the Agreement as the same may be amended in accordance with the provisions of said Part III.

“Maintenance and Operation Costs” mean the costs paid or incurred by the City for maintaining and operating the Electric System including, but not limited to, (a) all costs of electric energy and power generated or purchased by the City for resale, costs of transmission, fuel supply and water supply in connection with the foregoing, (b) all expenses of management and repair and other expenses necessary to maintain and preserve the Electric System in good repair and working order, (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Electric System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, (d) all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of any resolution heretofore adopted by the City Council of the City authorizing the incurrence or issuance of any obligations payable from the Net Revenues, such as compensation, reimbursement and indemnification of a trustee, remarketing agent or surety costs, letter of credit fees, fees and expenses of Independent Certified Public Accountants and independent engineers; (e) all amounts required to be paid by the City under contracts with a joint powers agency for the purchase of capacity, energy, transmission capability or any other commodity or service in connection with the foregoing, which contract requires payments to be made by the City thereunder to be treated as maintenance and operation costs of the Electric System; (f) all

deposits to be made to a rebate fund pursuant to a tax certificate; and (g) any other cost or expense which, in accordance with Generally Accepted Accounting Principles, is to be treated as a cost of operating or maintaining the Electric System; but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor, amortization of intangibles and City Transfers.

“Net Revenues” mean, for any period of time in question, the Revenues during such period less the Maintenance and Operation Costs during such period.

“Option Amount” means an amount equal to Forty-Two Million Dollars (\$42,000,000.00) plus interest on such amount from the Effective Date to but not including the Option Exercise Date at the rate of Five Percent (5%) per annum.

“Option Exercise Date” means the date the Corporation makes the payment contemplated by Section 3.01 of Part I of the Agreement to acquire Calpine’s rights under Part III of the Agreement.

“Option Expiration Date” means November 30, 2002.

“Original Agreement” means the CAISO energy purchase agreement between the City and Calpine evidenced by the Transaction Confirmation, identified as a CAISO Confirmation, dated February 9, 2001, incorporating the terms and conditions of the Western Systems Power Pool Agreement (version effective July 1, 2000), as modified by such CAISO Confirmation, executed on behalf of Calpine on February 9, 2001 and executed on behalf of the City on February 20, 2001, as modified by that certain letter agreement, dated March 9, 2001, and signed by Dennis W. DeCuir and Janet Dixon.

“Part” means with reference to the Agreement, the portions of the Agreement designated as separate parts pursuant to Section 2.01 of Part I of the Agreement.

“Prepayment Price” means, with respect to any prepayment of the Installment Payments pursuant to Section 3.02 of Part III of the Agreement, an amount equal to the present value of the Installment Payments as of the date of such prepayment determined using a discount rate of 6.5% per annum and a year of twelve, thirty day months.

“Revenues” mean all gross income and revenue received or receivable by the City from the ownership or operation of the Electric System, including all rates and charges for the Electric Service and the other services and facilities of the Electric System, all proceeds of insurance covering business interruption loss relating to the Electric System and all other income and revenue howsoever derived by the City from the ownership or operation of the Electric System or otherwise arising from the Electric System, including all income from the deposit or investment of any money in the City’s Electric Revenue Fund, but excluding (i) proceeds of taxes and (ii) refundable deposits made to establish credit and advances or contributions in aid of construction and line extension fees.

“State” means the State of California.

EXHIBIT B TO PART III
INSTALLMENTS PAYMENTS

<u>Payment Date</u>	<u>Amount of Installment Payment</u>
12/1/2002	\$535,000.00
1/1/2003	\$535,000.00
2/1/2003	\$535,000.00
3/1/2003	\$535,000.00
4/1/2003	\$535,000.00
5/1/2003	\$535,000.00
6/1/2003	\$535,000.00
7/1/2003	\$535,000.00
8/1/2003	\$535,000.00
9/1/2003	\$535,000.00
10/1/2003	\$535,000.00
11/1/2003	\$535,000.00
12/1/2003	\$535,000.00
1/1/2004	\$535,000.00
2/1/2004	\$535,000.00
3/1/2004	\$535,000.00
4/1/2004	\$535,000.00
5/1/2004	\$535,000.00
6/1/2004	\$535,000.00
7/1/2004	\$535,000.00
8/1/2004	\$535,000.00
9/1/2004	\$535,000.00
10/1/2004	\$535,000.00
11/1/2004	\$535,000.00
12/1/2004	\$535,000.00
1/1/2005	\$535,000.00
2/1/2005	\$535,000.00
3/1/2005	\$535,000.00
4/1/2005	\$535,000.00
5/1/2005	\$535,000.00
6/1/2005	\$535,000.00
7/1/2005	\$535,000.00
8/1/2005	\$535,000.00
9/1/2005	\$535,000.00
10/1/2005	\$535,000.00
11/1/2005	\$535,000.00
12/1/2005	\$535,000.00
1/1/2006	\$535,000.00
2/1/2006	\$535,000.00

<u>Payment Date</u>	<u>Amount of Installment Payment</u>
3/1/2006	\$535,000.00
4/1/2006	\$535,000.00
5/1/2006	\$535,000.00
6/1/2006	\$535,000.00
7/1/2006	\$535,000.00
8/1/2006	\$535,000.00
9/1/2006	\$535,000.00
10/1/2006	\$535,000.00
11/1/2006	\$535,000.00
12/1/2006	\$535,000.00
1/1/2007	\$535,000.00
2/1/2007	\$535,000.00
3/1/2007	\$535,000.00
4/1/2007	\$535,000.00
5/1/2007	\$535,000.00
6/1/2007	\$535,000.00
7/1/2007	\$535,000.00
8/1/2007	\$535,000.00
9/1/2007	\$535,000.00
10/1/2007	\$535,000.00
11/1/2007	\$535,000.00
12/1/2007	\$535,000.00
1/1/2008	\$535,000.00
2/1/2008	\$535,000.00
3/1/2008	\$535,000.00
4/1/2008	\$535,000.00
5/1/2008	\$535,000.00
6/1/2008	\$535,000.00
7/1/2008	\$535,000.00
8/1/2008	\$535,000.00
9/1/2008	\$535,000.00
10/1/2008	\$535,000.00
11/1/2008	\$535,000.00
12/1/2008	\$535,000.00
1/1/2009	\$535,000.00
2/1/2009	\$535,000.00
3/1/2009	\$535,000.00
4/1/2009	\$535,000.00
5/1/2009	\$535,000.00
6/1/2009	\$535,000.00
7/1/2009	\$535,000.00
8/1/2009	\$535,000.00
9/1/2009	\$535,000.00
10/1/2009	\$535,000.00
11/1/2009	\$535,000.00
12/1/2009	\$535,000.00

<u>Payment Date</u>	<u>Amount of Installment Payment</u>
1/1/2010	\$535,000.00
2/1/2010	\$535,000.00
3/1/2010	\$535,000.00
4/1/2010	\$535,000.00
5/1/2010	\$535,000.00
6/1/2010	\$535,000.00
7/1/2010	\$535,000.00
8/1/2010	\$535,000.00
9/1/2010	\$535,000.00
10/1/2010	\$535,000.00
11/1/2010	\$535,000.00
12/1/2010	\$535,000.00
1/1/2011	\$535,000.00
2/1/2011	\$535,000.00
3/1/2011	\$535,000.00
4/1/2011	\$535,000.00
5/1/2011	\$535,000.00
6/1/2011	\$535,000.00
7/1/2011	\$535,000.00
8/1/2011	\$535,000.00
9/1/2011	\$535,000.00
10/1/2011	\$535,000.00
11/1/2011	\$535,000.00
12/1/2011	\$535,000.00